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## Colorado Small Estate Law

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tlement—much of it in the form of objectionable human beings. I am sure that most of you wish that it had been cast aside somewhere along the way before it got to you. And yet sometimes I think that the dignity and human splendor of the law depend to a great extent on how the court disposes of its rubbish. For it is through the handling of such cases that the court has the opportunity once again to state the human principles on which true law flourishes—and in the restatement of these principles the judge is brought closer to the layman, the layman closer to the judge.

And that is as it should be. For the layman and the judge are in reality the same—they are free people seeking, by tolerance and humanity and wisdom, to keep the law a true guide to fruitful lives during the few years God has allotted us all.

Gentlemen, I realize I have spoken far longer and with less exactitude than any newspaperman has a right to do. But do forgive me. For I never expect to have the opportunity of speaking again out loud before a distinguished gathering of federal judges—and I wanted to make the most of it.

## Colorado Small Estate Law

By A. A. CLEMENTS \*

There is a difference of opinion among members of the legal profession as to whether the provisions of section 77, chapter 176, 1935 Colorado Statutes Annotated, authorizes transfer of real estate of a decedent whose estate does not exceed \$300.00 in value.<sup>1</sup> I have heard of no instance where the legality of the transfer of personal property under this section has been questioned. Some lawyers approve titles to real estate transferred under this section; others disapprove. This situation creates a confusion which detracts from the confidence of the public in the opinions of lawyers, and casts a doubt upon the legality of real estate titles so transferred.

Section 77 reads as follows:

"In all cases where the estate of a decedent, or of a minor, shall be of the value of \$300.00 or less, the court may, upon verified application by a creditor, or person interested in the estate, authorize the payment, transfer or delivery thereof in the case of a decedent's estate, unto the surviving spouse, or other heirs, or the creditors in the discretion of the court, and in the case of a minor, to the natural guardian of the minor, if such there be, otherwise to a next friend, appointed by the court, without the

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\* Judge of the Delta County Court.

<sup>1</sup> Editor's note: Real Estate Title Standard No. 37 of the Denver Bar Association reads, "Problem: Can Section 77, Chapter 176, C. S. A. 1935, with reference to estates under \$300.00 be used to transfer title to real estate? Answer: No."

appointment of an administrator, in the case of the decedent, or, of a guardian in the case of a minor, or the entry of security. The docket fee in such cases shall be the sum of \$5.00."

(Docket fee reduced to \$2.00 by laws of 1945.)

This statute repeals all acts and parts of acts in conflict therewith.

The legal significance of the word "estate" as used in this section determines the intention of the legislature as to property authorized to be transferred.

It is the unanimous holding of authorities that the word "estate" as used in section 77 means all property, both real and personal, of which a person dies seized.

I here cite a few of such authorities:

"While in its primary and technical sense the term 'estate' refers only to an interest in land yet it has acquired a much wider import and application, being applied to all property of every description as well as realty . . ."<sup>2</sup>

In *Harrison vs. Lamar*, 33 Arkansas, 824, in construing a statute providing for transfer of estates of the value of \$300.00 or less, it was held that the word "estate" meant "the mass of property left by decedent."

"In the American courts the word 'estate' is a word of the greatest and broadest significance. It comprehends species of property, real and personal."<sup>3</sup>

I quote from the opinion in the case of *Glascok, et ux vs. Gray, et al.*, 62 S. E. 434:

" . . . We must assume that the legislature used the word 'estate' in its true legal significance; and as such it embraces an interest in anything that is the subject of property, especially in lands. Preston defines it to be 'the interest which any one has in lands, or in any other object of property.

"(2) (Objective idea) The thing itself of which one is the owner; and species of property, real or personal."<sup>4</sup>

The above citations very definitely show that section 77 by its provisions authorizes the transfer of both real and personal property.

The position of some lawyers that this act authorizes transfer of personal property but not real estate is inconsistent and not well taken.

If it is contended that this act authorizes the transfer of property without due process of law, lack of notice,<sup>5</sup> etc., this objection can be as forcibly

<sup>2</sup> 21 Corpus Juris, 913; 19 American Jurisprudence, 462.

<sup>3</sup> 2 Redfield on Wills c 14, sec. 48; *Deering vs. Tucker*, 55 Me. 287; *Godfred vs. Humphrey*, 29 Am. Dec. 621.

<sup>4</sup> *Andersons Dictionary of Law*, page 414 (defining estate).

<sup>5</sup> Editor's note: In the last two regular sessions of the legislature bills have been introduced to overcome all known objections to transferring real estate under this act, but these bills have not gained sufficient backing of the lawyers and county judges to insure their passage.

urged against the legality of transfer of personal property as of real. An attack on such transfer of personal property is as likely to occur as an attack on such transfer of real estate. Personal property, stocks, bonds, etc., of little value at time of transfer, are equally as likely to later become of great value as is real estate. The value involved in these transfers being so trivial, attacks on them are very improbable.

This act is a step in the right direction. It is serving a good purpose, and lawyers should not by captious rulings based on remote possibilities, thwart the efforts of the legislature to simplify the procedures and minimize the cost of transfer of these small estates.

If the blight of socialized law and socialized medicine ever settles upon the legal and medical professions, it will be because the cost of legal procedure and medical treatment and surgery is beyond the ability to pay of a great number of our citizens. The members of both of these professions should recognize this fact and lend all possible assistance to practical methods of alleviating conditions upon which the demand for a destructive socialized remedy is based.

We lawyers should also avoid building with petty objections and trivial technicalities a public sentiment in harmony with the suggestion of Shakespeare (Henry VI), "The first thing we do, let's kill all the lawyers."

### **Admitted to a Higher Court**

CLARENCE A. BAILEY, prominent Denver lawyer, died at the age of 55 years of a heart attack. He was a graduate of Denver University School of Law and attended law school at Columbia University. He received the Distinguished Service Cross for military services in the First World War. He was one of the founders of the Denver Gyro Club and a Mason.

### **Calendar**

October 7—Denver Bar Association regular monthly meeting 12:15 P. M., Chamber of Commerce dining room. John Kirkland Clark, of the New York City Bar, speaker.

October 18 and 19—Colorado Bar Association, 48th Annual Meeting, Broadmoor Hotel, Colorado Springs.  
See announcements on pages 213 and 214 of this issue.

October 28 to November 1—American Bar Association, 69th Annual Meeting, Atlantic City, New Jersey. See American Bar Association Journal for complete announcement.

November 4—Denver Bar Association regular monthly meeting, 12:15 P. M., Chamber of Commerce dining room.